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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,623	10/06/2001	Robert H. Cheyne III	0499-021B	5190

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EXAMINER

ROSE, ROBERT A

ART UNIT

PAPER NUMBER

3723

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/972,623

Applicant(s)
Cheyne

Examiner
Robert Rose

Art Unit
3723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 27, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

Art Unit: 3723

DETAILED ACTION

1. Receipt is acknowledged of Applicant's Preliminary Amendment, filed May 27, 2003.
2. Receipt is acknowledged of Applicant's Prior Art Statement, filed May 27, 2003.
3. Claims 1-19 are presented for examination.
4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4, line 1 the claim currently is dependent from itself, thus rendering the scope of the claim indeterminant.
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
6. Claims 1, and 6-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mori. Mori discloses a non-absorbent antimicrobial surface comprising all of the subject matter set forth in Applicant's claims above. An antimicrobial agent is incorporated into a cured polymeric resin binder coating, which may be adhered to a substrate wall. Mori specifically discloses an antibacterial additive comprising the compound diiodomethyl-p-tolysulfone.
7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3723

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 10, 14-15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mori. To simply repeat the coating procedure in multiple steps in order to ensure complete curing of the underlying binder layers, for thicker coating applications would have been at most an obvious matter of design choice to those of ordinary skill in the art. With regard to claim 20, the method of Mori is disclosed as also useful in coating of walls and floors, which can typically be of wood or metal, thus the coating of such substrates by the method of Mori would have been at most an obvious matter of design choice.

9. Claims 1-7, and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palaikis et al in view of Mori. Mori discloses an antibacterial polymeric binder comprising the compound diiodomethyl-p-tolysulfone. To incorporate a known antibacterial agent such as a sulfone into the resin binder mixture of Palaikis et al prior to curing to prevent the formation of bacteria or mildew in the pad during prolonged periods of non-use would have been obvious in view of Mori.

10. Claims 8-9, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palaikis et al in view of Mori and further in view of Cameron. To incorporate a known antibacterial agent such as a sulfone into the resin binder of Palaikis et al to prevent the formation of bacteria or mildew in the pad during prolonged periods of non-use would have been obvious in view of Mori. Cameron discloses the known use of lauryl sulfate in a detergent pad

Art Unit: 3723

formed of non-woven nylon fibers(column 5, line 18). To further incorporate a second known antibacterial agent such as lauryl sulfate into the binder of Palaikis et al to prevent the formation of bacteria or mildew during prolonged periods of non-use would have been obvious in view of Cameron. Such use of plural agents would protect the ultimate user from a wider variety of bacteria which could otherwise grow in the pad during periods of non-use.

11. Any inquiry concerning this communication should be directed to Robert Rose at telephone number (703) 308-1360.

Rr

August 22, 2003.



ROBERT A. ROSE
PRIMARY EXAMINER
ART UNIT 323